

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE, BY ADDING A NEW DIVISION 13, SECTIONS 142.1301, 142.1302, 142.1303, 142.1304, 142.1305, 142.1306, 142.1307, 142.1308, 142.1309, 142.1310, 142.1311, AND 142.1312, ALL PERTAINING TO THE PROVISION OF AFFORDABLE HOUSING THROUGH INCLUSIONARY ZONING.

WHEREAS, affordable housing furthers geographic and community balance through providing a range of housing opportunities throughout the City and supports the City's Balanced Communities Policy; and

WHEREAS, state law requires that each local government agency develop a comprehensive long-term plan establishing policies for future development through the use of a locally-prepared and State-approved housing element of the city's general plan. Applicable California Law as specified in the Government Code (Sections 65300, 65302(c), and 65583(c)) states that the plan must (1) "encourage the development of a variety of types of housing for all income levels, including multifamily rental housing"; and (2) "(a)ssist in the development of adequate housing to meet the needs of low and moderate-income households"; and

WHEREAS, the currently adopted Housing Element for the City includes as goals to “ensure the development of sufficient new housing for all income groups” and “significantly increase the number of affordable housing opportunities.” As a means of attaining these goals, the Housing Element states “an inclusionary housing program is an essential tool to enable the City to substantially increase the number of *dwelling units* affordable to lower income households and to implement the City’s Balanced Communities Policy”; and

WHEREAS, new residential development has not provided sufficient housing opportunities for households with incomes at or below the Area Median Income; and

WHEREAS, the amount of land in the City available for new residential development is severely limited by geography and topography; and

WHEREAS, inclusionary housing programs represent an extension of cities’ police powers to regulate land use, ensuring that the limited supply of developable land provides housing opportunities for all incomes; and

WHEREAS, San Diego faces a growing shortage of housing that is affordable to a wide range of our population. New graduates, senior citizens, families with children, first time home buyers, and employees in industries important to a healthy economy are all affected by the lack of affordable housing within the City of San Diego; and

WHEREAS, the lack of affordable housing is detrimental to the City’s economic vitality and quality of life. Economic diversity fosters social, environmental, and economic conditions that protect and enhance the quality of life of the City; and

WHEREAS, the lack of affordable housing is detrimental to the health, safety and welfare of the City’s residents. Employees may be forced to live in less than adequate housing within

the City, pay a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-increasing distances to their jobs from housing located outside the City; and

WHEREAS, in 1992, the City's voters imposed an inclusionary housing requirement in the North City Future Urbanizing Area [FUA] of the City of San Diego, where no rental housing or affordable housing existed. The inclusionary housing obligation requires that twenty percent (20%) of all new *dwelling units* be affordable to households earning sixty-five percent (65%) of the area median income. It is in the best interest of the City to continue to promote jobs-housing balance in the FUA by maintaining the current regulations within the FUA for the following reasons: (i) a major portion of remaining vacant residential land in the City of San Diego is located in the FUA; (ii) home prices for new homes in the FUA and adjacent areas are above pricing levels found in the City and the region; (iii) residential development within the FUA has tended toward low-density for-sale developments, rather than higher-density, multi-family development; (iv) the limited amount of multi-family development found in the FUA is a direct result of the existing inclusionary housing requirement; and (v) employment in areas adjacent to the FUA includes a number of jobs at very low, low, and moderate income wage levels. Providing for development of sufficient affordable housing on the remaining raw developable land in this area is critical to ensure a beneficial jobs-housing balance within the City; and

WHEREAS, an inclusionary housing program can assist in meeting the City's goals of providing affordable housing in a balanced manner, the need for an increased supply of affordable housing, and combat the adverse effects to the City by not providing for sufficient affordable housing; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 2, of the San Diego Municipal Code is amended by adding a new Division 13, Sections 142.1301, 142.1302, 142.1303, 142.1304, 142.1305, 142.1306, 142.1307, 142.1308, 142.1309, 142.1310, 142.1311 and 142.1312, to read as follows:

**Division 13: Inclusionary Affordable Housing Regulations**

**§ 142.1301 Purpose of Inclusionary Affordable Housing Regulations**

The purpose of this Division is to encourage diverse and balanced neighborhoods with housing available for households of all income levels. The intent is to ensure that when developing the limited supply of developable land, housing opportunities for persons of all income levels are provided.

**§ 142.1302 When Inclusionary Affordable Housing Regulations Apply**

This Division applies to all residential *development* except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those units are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the length of the restriction or the level of affordability, the more restrictive of the two shall apply.

**§ 142.1303 Exemptions From the Affordable Housing Inclusionary Regulations**

This Division is not applicable to the following:

- (a) Residential *development* located in the North City Future Urbanizing Area of the City of San Diego or any project located in an area of the City that was previously

located in the North City Future Urbanizing Area and has been phase shifted into the Planned Urbanizing Area, and is subject to the inclusionary zoning requirements contained in the North City Future Urbanizing Area Framework Plan, San Diego Municipal Code section 143.0450(d), the Subarea Plans, Development Agreements, Affordable Housing Agreements, or conditions of approval of a *development* permit, as applicable.

- (b) Proposed *development* that has obtained a variance or waiver in accordance with Sections 142.1304 and 142.1305.
- (c) Residential *development* or portion of the *development* that meets the following criteria:
  - (1) The unit is being sold to persons who own no other real property and will reside in the unit;
  - (2) The unit is affordable to and sold to households earning less than one hundred fifty percent (150%) of the *area median income*;
  - (3) The unit has two (2) or more bedrooms; and
  - (4) The unit(s) has recorded against it an agreement between the *applicant* and the San Diego Housing Commission assuring that the provisions of Section 142.1303(c) have been met.
- (d) Condominium conversions in accordance with Chapter 12, Article 5, Division 4.
- (e) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.

- (f) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.

**§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations**

- (a) Except as provided in Section 142.1304(c), a variance from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require that the findings in Section 142.1304(d) be made.
- (b) An application for a variance shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance request shall be reviewed in accordance with Process Four.
- (d) No variance shall be issued unless:
  - (1) Special circumstances unique to that *development* justify the granting of the variance;
  - (2) The *development* would not be feasible without the modification;

- (3) A specific and substantial financial hardship would occur if the variance were not granted; and
  - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):
  - (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
  - (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

**§ 142.1305 Waiver Rules for Inclusionary Affordable Housing Regulations**

- (a) Except as provided in Section 142.1305(c), a waiver from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require that the findings in Section 142.1305(d) be made.
- (b) An application for a waiver shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager

determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver and shall be a matter of public record.

- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The waiver shall be in accordance with Process Five.

- (d) No waiver shall be issued to an applicant unless:
- (1) Special circumstances, unique to that *development* justify the grant of the waiver;
  - (2) The *development* would not be feasible without the waiver;
  - (3) A specific and substantial financial hardship would occur if the waiver were not granted; and
  - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

**§ 142.1306 General Inclusionary Affordable Housing Requirements**

- (a) At least ten percent (10%) of the total dwelling units in the proposed *development* shall be affordable to *targeted rental households* or *targeted ownership households*. For any partial unit calculated, the applicant shall pay a prorated



amount of the in lieu fee in accordance with Section 142.1310 or provide an additional affordable unit.

(b) The requirement to provide dwelling units affordable to and occupied by *targeted rental households* or *targeted ownership* households, can be met in any of the following ways:

- (1) On the same site as the proposed project site;
- (2) On a site different from the proposed project site, but within the same community planning area. Nothing in this Division shall preclude an *applicant* from utilizing affordable units constructed by another in accordance with this Division upon approval by the Housing Commission in accordance with the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;
- (3) On a site different from the proposed project site and outside the community planning area if the *applicant* has obtained a variance in accordance with Section 142.1304. Nothing in this Division shall preclude an *applicant* from utilizing affordable units, constructed by another *applicant* in accordance with this Division, upon approval by the Housing Commission pursuant to the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;
- (4) Payment of an in lieu fee in accordance with the provisions of Section 142.1310; or
- (5) Any combination of the requirements of this Section.

**§ 142.1307 General Rules for Inclusionary Affordable Housing Regulations**

- (a) The Chief Executive Officer of the San Diego Housing Commission shall be responsible for determining *targeted rental household* and *targeted ownership household* affordability standards and resident qualifications and for monitoring conformance with Declarations of Covenants, Conditions and Restrictions.
- (b) The City shall establish and adopt submittal requirements, review procedures, and standards and guidelines for affordable housing to be referred to as the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual which shall be included in the Land Development Manual.
- (c) The San Diego Housing Commission shall determine the reasonable fee to be paid by the *applicant* for the costs incurred by the San Diego Housing Commission in connection with implementation of this Division.

**§ 142.1308 Development Review Procedures for Inclusionary Affordable Housing**

- (a) The City Manager will review applications for *development* and determine whether the proposed *development* is subject to Process One decisions or requires decisions in accordance with Process Two, Three, Four or Five.
- (b) If the proposed *development* is subject to Process One decisions only, the *applicant* shall be so advised and informed of the in lieu fee rate in accordance with Section 142.1310 or referred to the San Diego Housing Commission to obtain a Declaration of Covenants, Conditions and Restrictions in accordance with Section 142.1311.

- (c) If proposed *development* is subject to Process Two, Three, Four or Five decisions, and the *applicant* intends to provide affordable housing in accordance with Section 142.1306(b)(1) through (3), the *applicant* shall be referred to the San Diego Housing Commission to obtain a Declaration of Covenants, Conditions and Restrictions in accordance with Section 142.1311. If the *applicant* intends to provide affordable housing in accordance with Section 142.1306(b)(4), the provisions of Section 142.1310 shall apply.

**§ 142.1309 Requirements for Inclusionary Affordable Housing**

*Development* of affordable units is subject to the following requirements and the provisions of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:

- (a) The affordable units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market-rate units receive final inspection approval from the Building Official.
- (1) The *applicant* may seek an alternative development schedule in accordance with the provisions of Sections 142.1304 and 142.1305 and decided in accordance with Process Two.
- (b) The affordable units shall be comparable in bedroom mix, design and overall quality of construction to the market-rate units in the *development*, except that the affordable units shall not be required to exceed three bedrooms per unit. The square footage and interior features of the affordable units shall not be required to be the same as or equivalent to the market-rate units, so long as they are of good

quality and are consistent with current building standards for new housing in the City of San Diego.

- (c) Sale or lease of the affordable units shall follow the marketing requirements and procedures contained within the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.
- (d) Affordability Levels and Restrictions–Rental Units:
  - (1) The units shall be occupied by *targeted rental households*.
  - (2) The monthly rent for each unit shall not exceed 1/12 of 30% of 65% average median income, as adjusted for household size, less reasonable allowances for utilities.
  - (3) The units shall remain affordable for a period of not less than fifty-five (55) years from the date of issuance of Certificate of Occupancy for the *development* or applicable phase of the *development* through the imposition of a declaration of covenants, conditions and restrictions in first lien position as required in Section 142.1311.
- (e) Affordability Levels and Restrictions–For Sale Units
  - (1) The units shall be occupied by *targeted ownership households*, subject to Section 142.1308(e)(3).
  - (2) The sales price for each unit shall not exceed an amount that is affordable to *targeted ownership households*. The amount affordable to *targeted ownership households* shall be no greater than 35% of the AMI, adjusted for household size, determined as of the date of the close of escrow and

shall not exceed an annual payment for all housing costs, including mortgage principal and interests, taxes, insurance, assessments, and five percent (5%) down payment, subject to Section 142.1308(e)(3).

(3) The equity in the affordable unit shall be shared as follows:

- (A) Equity for purposes of this Division is measured by the difference in the original unrestricted fair market value of the affordable unit at the time of the acquisition of the affordable unit and the unrestricted fair market value of the affordable unit on the date of the first resale, and each and every transfer, lease or refinancing as determined by an appraisal approved by the City.
- (B) Upon the first resale of the affordable unit during the first 15 years from the date of issuance of the certificate of occupancy, the City and owner of the affordable unit shall share the equity in accordance with the provisions of Table 142-13B.
- (C) Upon each transfer, lease and or refinancing during the first 15 years from the date of issuance of the certificate of occupancy, the City and the Owner shall share the equity in the affordable unit based upon an appraisal of the affordable unit in accordance with the provisions of Table 142-13B.
- (D) Upon any sale or any transfer, whenever it occurs the City shall also receive that sum which is calculated as the difference between the original fair market value of the affordable unit and the

restricted value of the affordable unit at the time of the original sale, as determined by an appraisal as approved by the City.

- (4) All funds collected shall be deposited in the Inclusionary Housing Fund.
- (5) The unit shall be sold at no less than fair market value.
- (6) The City of San Diego shall be entitled to the first right of refusal on any "for sale" unit upon its sale.

**Table 142-13B**

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

- (f) In accordance with Section 142.1311, each affordable unit shall have recorded against it a Declaration of Covenants, Conditions and Restrictions in favor of the City of San Diego.

**§ 142.1310 In Lieu Fee Regulations**

In accordance with Section 142.1306(b)(4), an *applicant* may pay an in lieu fee subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:

- (a) The rate of the in lieu fee shall be determined at the time the building permit application is filed.
- (b) The amount of the in lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.
- (c) No building permit may be issued without payment of the in lieu fee.
- (d) Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable.

**Table 142-13C**

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ FOOT

**Table 142-13D**

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

- (e) The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption

of this Division, based upon 50% of the difference between the median cost of housing and housing price affordable to the median household.



**§ 142.1311 Declaration of Covenants, Conditions and Restrictions**

All *development* in accordance with Section 142.1309, except Section 142.1309(b)(4), shall be subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.

- (a) The applicable portion of the *development* shall have recorded against it a Declaration of Covenants, Conditions and Restrictions approved by the San Diego Housing Commission, in favor of the City of San Diego.
- (b) The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing
- (c) The Declaration of Covenants, Conditions and Restrictions shall include the following provisions:
  - (1) Compliance with the City of San Diego marketing and monitoring procedures.
  - (2) The affordable units for *targeted rental households* shall remain affordable for fifty-five (55) years from the date of issuance of the first certificate of occupancy.
  - (3) All affordable units for *targeted ownership households* shall remain affordable as follows:
    - (A) If the affordable unit is not resold to a *targeted ownership household* at a price described in Section 142.1309(e)(2), provision shall be made in the for-sale affordability restrictions for the

recapture of a share of the profits on resale of the affordable unit, if the unit is not resold to a *targeted ownership household* at the sales price described in Section 142.1309(e)(2).

- (B) The Declaration of Covenants, Conditions and Restrictions or conditions of approval will include provisions restricting resale prices and purchaser income levels according to the formula specified in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.
- (C) In the event a subordination of the deed of trust securing the affordability conditions contained in a Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the *applicant's* receipt of adequate construction or permanent financing for the project, or to enable first time home buyers to qualify for mortgages, the *applicant* shall enter into a separate agreement with the City of San Diego for subordination of the deed of trust securing the affordability restrictions.
- (4) The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the San Diego Housing Commission assuring performance recorded against the restricted unit or units, and such other instruments as may be required by the Chief Executive Officer of the San Diego Housing Commission to effectuate the viability of

the affordability restrictions for the entire term of required affordability.

- (5) Any other terms necessary to implement the provisions of this Division.

#### **§ 142.1312 Reporting Requirements**

- (a) The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division including, but not limited to, the following:
  - (1) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
  - (2) The number of *applicants* and location of *developments* that applied for a waiver/variance or exemption in accordance with Sections 142.1304 and 142.1305 or Section 142.1303, respectively, and the number of *applicants* and location of *developments* that were granted such an exemption or waiver/variance and the terms of each variance or waiver; and
  - (3) The number of market rate units and the number of affordable units, including the location of all affordable units.
- (b) In conjunction with the comprehensive update of the City of San Diego Progress Guide and General Plan, Housing Element, the San Diego Housing Commission and the Planning Department shall direct a study to determine the relationship in

nature and amount between the production of market-rate residential housing and the availability and demand for affordable housing in San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefor was made prior to the date of adoption of this ordinance.

APPROVED: CASEY GWINN, City Attorney

By \_\_\_\_\_  
Mary Jo Lanzafame  
Deputy City Attorney

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